

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
) CC Docket No. 94-1
LEC Price Cap Regulation)

**Motion for Leave to File Supplemental Reply Comments
Or, In The Alternative, To Strike**

The Ad Hoc Telecommunications Users Committee (Ad Hoc), through undersigned counsel, hereby moves for leave to file Supplemental Reply Comments as described below, or, in the alternative, moves for a Commission order striking the "Total Factor Productivity Methods for Local Exchange Carrier Price Cap Plans" (Revised TFP Study) submitted by the United States Telephone Association (USTA) in support of its Comments filed in this proceeding on January 16, 1996 (USTA Comments), and striking the USTA Comments and reply comments, to the extent that they rely on the Revised TFP Study. In support of this Motion, Ad Hoc shows the following:

Paragraphs 15 and 148 of the Fourth Further Notice of Proposed Rulemaking in this proceeding,¹ directed all parties to file and make available all data underlying any Total Factor Productivity (TFP) studies that they submit in this docket. On January 16, 1996, pursuant to these requirements, Ad Hoc

¹ FCC 95-406 (released September 27, 1995) ("FFNPRM").

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submitted in hard copy and on floppy disk all of the data underlying its adjustments to the TFP studies that USTA had filed previously in this docket.

After reviewing the USTA Comments and Revised TFP Study that USTA filed in response to the FFNPRM, Ad Hoc, by letter dated January 30, 1996, requested that USTA provide additional information relevant to issues raised in the FFNPRM. Ad Hoc presented six specific information requests in its January 30, 1996 letter, a copy of which is attached hereto (Ad Hoc Request). Believing that the information requested almost certainly was in the possession of USTA, Ad Hoc requested that USTA respond by February 5, 1996.

On February 8, 1996, USTA supplied information responsive to only one of Ad Hoc's six requests, and informally advised counsel for Ad Hoc that USTA's complete response could be expected on February 16 or 20, 1996. On February 20, 1996, USTA informally advised counsel for Ad Hoc that USTA's complete response then could be expected on February 23 or February 26, 1996. Reply comments are due in this proceeding on March 1, 1996. As of the date hereof, USTA has not furnished the requested information.

Paragraph 15 of the FFNPRM provides in pertinent part that

any party submitting studies, proposed methods for calculating an X-Factor, or other empirical information must furnish promptly upon request by Commission staff or any party to this proceeding workpapers and any other data necessary to replicate the results submitted in this proceeding. If a party fails to do so, we will accord no weight to those studies, methods, or empirical information in our deliberations.

As demonstrated by the attached Ad Hoc Request, the information Ad Hoc seeks from USTA is critical to Ad Hoc's analysis and verification of the conclusions reached in the Revised TFP Study, and therefore falls squarely within the scope of Paragraph 15's disclosure requirements. To the extent that Ad Hoc's Request seeks USTA's constituent data for the period 1984-1993, the period under consideration in the FFNPRM, upon which data USTA relies for its employment of the simplified methodology and its conclusions concerning changed conditions during that period, such data is essential to Ad Hoc's validation and replication of the simplified methodology and the factual considerations justifying the change in USTA's approach since its earlier study. In short, Ad Hoc has requested the data for purposes clearly contemplated by Paragraph 15 of the FFNPRM, and therefore USTA is obligated to furnish the data without further delay.

Ad Hoc has elected to file the instant Motion in lieu of requesting an extension of time to file Reply Comments because of its conviction that resolution of the issues raised in this proceeding should not be delayed. The currently effective "X-Factor" is far too low. It must be increased,² and the interstate access charges reduced. Consumers will pay too much for telecommunications service until the "X-Factor" is properly specified. The Commission should proceed with its consideration of reply comments without

² Ad Hoc has urged the Commission to specify an "X-Factor" of 9.9%. AT&T has suggested giving the LECs a choice of two "X-Factors," 7.8% with sharing, or 8.8% without sharing.

delay, but also should provide a meaningful opportunity to evaluate USTA's assertions by granting the instant request for leave to file Supplemental Reply Comments.

If, however, USTA fails to furnish the requested data, the Commission should strike the Revised TFP Study and the USTA Comments, to the extent that they rely on that study. Failure to provide the requested information will deprive the Commission, Ad Hoc, and other participating parties a full and fair opportunity to evaluate the accuracy and reliability of the conclusions reached in the Revised TFP Study, as well as USTA's arguments supported by that study.

Accordingly, Ad Hoc respectfully requests that the Commission grant it leave to file Supplemental Reply Comments evaluating the data sought in the attached Ad Hoc Request within ten days of USTA's furnishing of that data, in its entirety, to Ad Hoc. In the alternative, if USTA fails to provide the requested data by March 1, 1996, Ad Hoc respectfully requests, in accordance with Paragraph 15 of the FFNPRM, that the Commission strike the Revised TFP Study, the USTA Comments, and any USTA reply comments, to the extent that they rely on that study. If USTA fails to furnish the requested data by March 1, Ad Hoc will so advise the Commission.

For the foregoing reasons, the Ad Hoc Telecommunications Users

Committee requests that the Commission issue an order consistent with this Motion.

Respectfully submitted,

**Ad Hoc Telecommunications
Users Committee**

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January 30, 1996

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Washington, D.C. 20005-2136

Re: CC Docket No. 94-1

Dear Ms. McDermott:

On behalf of the Ad Hoc Telecommunications Users Committee, attached hereto is a request for information that is relevant to the issues that the FCC currently is considering in the above-referenced proceeding. We request that you provide the information specified in the requests by the close of business on February 5, 1996.

Sincerely,



James S. Blaszak

Kevin S. DiLallo

cc (with enclosure):

Regina Keeney
A. Richard Metzger
Geraldine Matisse
Mark Uretsky

REQUESTS TO USTA FOR ADDITIONAL INFORMATION

1. Table 8 on page 31 of the study "Total Factor Productivity Methods for Local Exchange Carrier Price Cap Plans" (hereafter referred to as Christensen's "simplified study"), provided as Attachment A to USTA's January 16, 1996 comments, presents TFP results for the period 1984 to 1993 for the nine price cap companies studied in the original Christensen LEC TFP study. In accordance with Paragraphs 15 and 148 of the Fourth Further Notice, please provide (on paper and computer disk):
 - a. All supporting data (comparable to that provided in the TFP Review Plan (TFPRP)) for the 1984 to 1993 time period necessary to replicate the "simplified" results shown in Table 8.
 - b. The individual company data for the time period 1984 to 1993 for each of the nine price cap companies and the derivation of the composite data series shown in the TFPRP necessary to replicate the "simplified" results shown in Table 8.
2. Table 9 on page 32 of Christensen's "simplified study" presents TFP results for the period 1988 to 1994 for the expanded sample of eleven price cap companies. In accordance with Paragraphs 15 and 148 of the Fourth Further Notice, and to the extent not already provided in response to the previous request, please provide (on paper and computer disk) the individual company data for each of the eleven price cap companies for the time period 1988 to 1994 and the derivation of the composite data series provided in the TFPRP necessary to replicate the "simplified results" shown in Table 9.
3. In accordance with Paragraphs 15 and 148 of the Fourth Further Notice, please provide (on paper and computer disk) workpapers which detail the actual calculation and data sources of the "Economic Value/Book Value Adjustment Factor" as described on page 17 of the Christensen "simplified study" and identified on sheet MISC1, page 2 of 2 (at lines 500, 510, 520) in the TFPRP necessary to replicate the simplified results shown in Tables 8 and 9.
4. In accordance with Paragraphs 15 and 148 of the Fourth Further Notice, please provide (on paper and computer disk) workpapers which detail the USOAR-related adjustments described on page 32 of the Christensen "simplified study" as made to the nine company sample for the period 1984-1993 necessary to replicate the results shown in Table 8.
5. In Appendix 3 of Christensen's "simplified study," telephone industry input prices are compared to US economy input prices. As set forth on page 41 in Appendix 3, telephone industry input prices in a previous Christensen Affidavit upon which Appendix 3 relies come from four different studies: (1) the USTA LEC study (for the 1984-1992 period), (2) a TFP study submitted to the North Dakota Public Service Commission (for the period 1983-1984); a Bell Communications Special Report (for the period 1980-1982); and the Bell System Study total factor productivity study (for the period 1948-

1979). In accordance with Paragraphs 15 and 148 of the Fourth Further Notice, please provide (on paper and computer disk) workpapers and any other supporting data for the various studies necessary to replicate and verify both telephone industry and US economy input price results relied upon in Christensen Appendix 3. This response should include, but not be limited to (a) a breakdown and development of capital, labor, and (where applicable) material inputs and their respective shares underlying both LEC and US input price data series, and (b) underlying individual company data for each of the price cap companies used to develop the composite data series necessary to replicate the LEC input price results relied upon in Christensen Appendix 3.

6. In Attachment A of the paper, "Economic Evaluation of Selected Issues from the Fourth Further Notice of Proposed Rulemaking in the LEC Price Cap Performance Review" (hereafter referred to as the "NERA paper") provided as Attachment C to USTA's January 16, 1996 comments, LEC input price changes are compared to US input price changes using two sets of data, labelled Christensen 1 Data and Christensen 2 Data. In accordance with Paragraphs 15 and 148 of the Fourth Further Notice, and to the extent not provided in response to the previous request, please provide (on paper and computer disk) workpapers and any other supporting data for the various studies necessary to replicate and verify both sets of telephone industry and US economy input price results relied upon in Attachment A of the NERA paper. This response, should include, but not be limited to (a) a breakdown and development of capital, labor and (where applicable) material inputs and their respective shares underlying both LEC and US input price data series, and (b) underlying individual company data for each of the price cap companies used to develop the composite data series necessary to replicate the LEC input price results relied upon in Attachment A of the NERA paper.

Certificate of Service

I, Kevin S. DiLallo, hereby certify that true and correct copies of the foregoing Motion of the Ad Hoc Telecommunications Users Committee for Leave to file Supplemental Reply Comments or, in the Alternative, to Strike, were sent on this 23d day of February, 1996 by first-class mail, postage prepaid, or by hand delivery to the following persons:

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